

**STATE OF MICHIGAN
IN THE SUPREME COURT**

COMPLAINT AGAINST

HON. LISA O. GORCYCA
6th Circuit Court
1200 North Telegraph Road
Pontiac, Michigan 48341

MSC No. 152831
Formal Complaint No. 98

**BRIEF IN SUPPORT OF THE COMMISSION'S DECISION AND RECOMMENDATION
FOR ORDER OF DISCIPLINE**

PROOF OF SERVICE

ORAL ARGUMENT REQUESTED

**JUDICIAL TENURE COMMISSION
OF THE STATE OF MICHIGAN**

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JURISDICTION

Judge Lisa O. Gorcyca (“Respondent”) is, and at all material times was, a judge of the 6th Circuit Court in Oakland County, Michigan. As a judge, Respondent is subject to all the duties and responsibilities imposed on her by the Michigan Supreme Court and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205. The Court has authority to act upon the recommendation of the Judicial Tenure Commission. Const. 1963, Art 6, §30. Michigan Court Rules 9.223 and 9.225 provide the method for this review.

STANDARD OF PROOF

The standard of proof in judicial disciplinary proceedings is by a preponderance of the evidence. *In re Haley*, 476 Mich 180 (2006); *In re Morrow*, 496 Mich 291, 298 (2014); MCR 9.211(A).

STANDARD OF REVIEW

The Supreme Court reviews the Judicial Tenure Commission’s findings of fact on a *de novo* basis. *In re Jenkins*, 437 Mich 15 (1991). The Court also reviews the recommendation of the Commission *de novo*. *In re Hathaway*, 464 Mich 672 (2001); *In re Morrow, supra*.

COUNTER STATEMENT OF PROCEEDINGS

On December 14, 2015, the Judicial Tenure Commission (“JTC” or “Commission”) filed a two-count Formal Complaint 98 (FC 98) alleging that Respondent had committed misconduct during a contempt hearing she held on June 24, 2015. FC 98 also alleged that Respondent had made misrepresentations to the Commission during its investigation of this matter. On December 14, 2015, pursuant to MCR 9.210 (B), the Commission requested the Michigan Supreme Court to appoint a Master to conduct the formal hearing in FC 98. Respondent’s Answer to FC 98 was filed on January 21, 2016. On January 22, 2016, the Michigan Supreme Court appointed the Hon. Daniel P. Ryan, a retired Wayne County Circuit judge, as the Master. On January 26, 2016, the Master scheduled May 27, 2016, as the hearing date for all motions and May 31, 2016, as the date for the commencement of the formal hearing.

On May 18, 2016, the parties filed their motions. The Examiner filed a motion to strike a number of Respondent’s witnesses and the deposition testimony of one of the witnesses, Susan Lichterman. Respondent filed a motion to disqualify the Examiner and the entire staff of the JTC and a motion in limine to preclude testimony and/or exhibits regarding any events that took place after the June 24, 2015, contempt hearing. Following arguments on May 27, 2016, the Master denied the Examiner’s motion to strike Ms. Lichterman’s deposition, Respondent’s motion to disqualify the Examiner and the JTC staff, and Respondent’s motion in limine. The Master granted the Examiner’s motion to strike some of Respondent’s witnesses, including proposed experts on contempt. The Master ruled that having taught the law of contempt at the National Judicial College for more than two decades (MH TX, 5/27/2016, p. 40, p. 47),¹ he was well versed in that area of the law and did not need expert testimony in making his decision.

¹ The abbreviations used in this brief are as follows: MH – Motion Hearing; FH – Formal Hearing; TX – transcript; E’s Exh. – Examiner’s Exhibit; R’s Exh. – Respondent’s Exhibit; R’s Obj. to MR’s Rept. – Respondent’s Objections to Master’s Report; R’s Ans. to FC – Respondent’s Answer to Formal Complaint; MR – Master’s Report; D&R – Decision and Recommendation; R’s SC Brief – Respondent’s Brief to the Supreme Court

A public hearing on FC 98 commenced on May 31 and was completed on June 1, 2016. On July 1, 2016, the Master issued a report containing his findings of fact and conclusions of law. The Master determined that the Examiner had presented sufficient evidence to conclude that each count had been proved by a preponderance of the evidence.² (MR, p. 30-34)

With regards to Count I, the Master found that Respondent had violated the Michigan Code of Judicial Conduct and Michigan Court Rules by holding thirteen-year-old LT³ in contempt of court for violating a court order that did not exist as to him. (MR, p. 12, p. 18, p. 19, p. 30) The Master further found that the demeaning and insulting comments and gestures that Respondent had used during LT's contempt hearing were unacceptable and contrary to the Michigan Code of Judicial Conduct. (MR, p. 18, p. 19) The Master found that even if LT's contempt hearing was to be considered as civil rather than criminal, Respondent had violated the substantive law of civil contempt by placing the "keys to the jailhouse" in the possession of LT's father. (MR, p. 20)

The Master also determined that Respondent had failed to put the "keys to the jailhouse" in the hands of the two younger children, RT and NT. (MR, p. 25) As with LT, the Master found that Respondent's statement to the children that when their father told her that they were ready to have lunch and dinner with him and that they were "normal human beings" she would review the case, effectively placed the "keys to the jailhouse" in the father's hands. (MR, p. 25) The Master found that Respondent had crossed the boundaries of "stern language" with RT and NT by failing to act in a patient and dignified and judicial manner (MR, p. 18, p. 31) and by making disparaging comments to the children about themselves, their sibling, and their mother. (MR, p. 31)

With regards to Count II, the Master found that Respondent had been untruthful in her answer to the Commission's 28-day letter where she claimed that when making circles with her finger at her right temple and comparing LT to Charles Manson and his cult she was not indicating

² The Master found that the Examiner had not proven one of the allegations of misrepresentation in Count II. The Examiner did not contest that finding.

³ In order to protect the children's privacy, initials are used in place of their names.

that LT was crazy but was referring to the “forward movement as a result of the therapy.” (MR, p. 28-29; E’s Exh. 69, p. 30, par. 32) The Master found unpersuasive Respondent’s explanation proffered at the formal hearing that upon receiving the Commission’s 28-day letter she felt that she was required to provide *some* response and that this “belief” explanation was the best that she could provide. (MR, p. 29) The Master declined to find that Respondent’s statement that she had not found the children in contempt for their refusal to talk to their father or to have lunch with him was a misrepresentation.

On August 5, 2016, Respondent filed her Objections to the Master’s Report and a Brief in Support. In response, on August 25, 2016, the Examiner filed a Petition and Brief to Adopt the Master’s Findings of Fact and Conclusions of Law. On September 22, 2016, Respondent filed a Reply Brief Pursuant to MCR 9.216. Oral arguments regarding the Master’s findings were held before the Commission on October 10, 2016. The JTC issued its Decision and Recommendation for Discipline (D&R) on November 14, 2016.

Like the Master, the Commission found that the Examiner had established by a preponderance of the evidence the allegations contained in Count I of the Formal Complaint, i.e. that Respondent committed misconduct during the contempt proceedings she held on June 24, 2015. As to Count II, the Commission declined to adopt the Master’s conclusion that the Examiner proved by a preponderance of the evidence that Respondent made intentional misrepresentations to the Commission during the investigation of this matter. The Commission determined that Respondent’s answer to the 28-Day Letter in which she claimed that her gesture of making circles with her finger at her temple while comparing LT to Charles Manson was not intended to mean that LT was crazy was not false within the meaning of the law. (D&R, p. 20) The Commission found, however, that Respondent’s answer was intentionally misleading, justifying the imposition of costs under MCR 9.205(B). Respondent filed her petition to reject or modify the JTC’s recommendations on December 22, 2016. The Examiner filed his response on January 12, 2017.

COUNTERSTATEMENT OF QUESTIONS INVOLVED

I

WHETHER THE MASTER AND THE COMMISSION PROPERLY FOUND THAT RESPONDENT COMMITTED JUDICIAL MISCONDUCT IN COUNT I?

The Commission answers “YES.”

Respondent answers “NO.”

II

WHETHER THE COMMISSION PROPERLY FOUND THAT RESPONDENT PROVIDED A MISLEADING ANSWER TO THE COMMISSION’S 28-DAY LETTER?

The Commission answers “YES.”

Respondent answers “NO.”

III

WHETHER THE COMMISSION’S RECOMMENDATION IS WARRANTED BASED UPON RESPONDENT’S ACTS OF MISCONDUCT?

The Commission answers “YES.”

Respondent answers “NO.”

COUNTERSTATEMENT OF FACTS

Respondent has been a judge of the 6th Circuit Court since January of 2009. (FH TX, p. 25; E's Exh. 69, p. 6) In January of 2010, Respondent was assigned to the Court's Family Division. (FH TX, p. 307-308) Included on her docket was *Eibschitz-Tsimhoni v Tsimhoni* (Tsimhoni),⁴ a divorce case involving three children, LT, (d.o.b. 7-6-2001), RT, (d.o.b. 8-29-2004), and NT, (d.o.b. 12-13-2005). (FH TX, p. 26; E's Exh. 69, p. 6) The parties in the Tsimhoni matter first came to the US from Israel in 1996. They settled in Ann Arbor, Michigan, where the Defendant-father (father) joined a University of Michigan Automotive Research Team as an engineer and the Plaintiff-mother (mother) joined the University of Michigan's Kellogg Eye Center as a pediatric ophthalmologist. (R's Exh. 3, p. 48) Although both parties were Israeli citizens, their children were born in the US and were considered as citizens of both countries. (R's Exh. 3, p. 48) In November of 2008, as the parties' marriage was falling apart, the father accepted a position with General Motors-Israel and moved to Israel. His wife and children, then two, four, and seven, remained in the US. (R's Exh. 3, p. 48) Although the father was in the US three to four times per year for business, (R's Exh. 4) he did not move back until early 2015.

In an attempt at marital reconciliation, the mother and children moved to Israel in September of 2009. (R's Exh. 3, p. 49) Three months later the mother returned to the US, established residency in Oakland County, and on December 17, 2009, filed for divorce. (R's Exh. 3, p. 44) Claiming that the children's removal was illegal, the father petitioned the US District Court in Detroit⁵ for an order for the immediate return of the children to Israel. On March 26, 2010, US District Court Judge Robert H. Cleland denied that petition by granting the mother's motion for summary disposition. (R's Exh. 3, p. 65)

⁴ Case No. 2009-766748-DM

⁵ The Defendant's federal action was filed under the Hague Convention Treaty on the Civil Aspects of International Child Abduction and the International Abduction Child Remedies Act, 42 USC §11601, *et seq.* (R's Exh. 3, p. 8/74; p. 44/74)

Psychologist Dr. Robert Erard interviewed the children in connection with the federal matter and issued a report concluding that the children mistrusted their father, did not miss him, did not feel secure in his presence, and did not believe that he had any love for them. (R's Exh. 43, p. 4) Other mental health professionals who interviewed the children pursuant to orders issued by Respondent likewise concluded that the children's refusal to participate in parenting time with their father was based on their distrust and fear of him. (E's Exh. 69, p. 2; R's Exh. 14, p. 4; R's Exh. 43)

On August 27, 2010, during parenting time at a park, the children called 911 claiming that their father had threatened to kill them. (R's Exh. 43, p. 6-7) A police report was filed and a referral was made to the Department of Human Services (DHS). (E's Exh. 69, p. 7) After conducting a forensic interview with LT and RT,⁶ the DHS concluded that the threat was credible and substantiated. (R's Exh. 43, p. 6-7) Although no further action was taken against the father by the DHS, on October 20, 2010, Respondent ordered that the father's future parenting time be supervised. (R's Exh. 7) At the time of that incident the children were four, five, and nine.

The judgment of divorce (JOD) was entered on August 8, 2011. (E's Exh. 2; E's Exh. 69, p. 6) The JOD awarded legal custody of the children jointly to both parties, with physical custody to the mother and parenting time to the father. (E's Exh. 69, p. 6, par. 5) Supervised parenting time was to continue during the father's visits to the US and arranged with the assistance of William Lansat, who was appointed as the Guardian Ad Litem (GAL) in August of 2010. (E's Exh. 69, p. 7, par. 8; R's Exh. 5; FH TX, p. 29, p. 190) The JOD prohibited the parties from making disparaging comments about each other in front of the children. (E's Exh. 2, p. 3)

In the ensuing four years, the parties appeared before Respondent on numerous occasions. (E's Exh. 69, p. 1, p. 4, p. 7) Many of the appearances were based on the father's allegations that the mother was not cooperating with the GAL's efforts to schedule parenting time during his visits to the US. (R's Exh. 14; R's Exh. 17; R's Exh. 32, p. 3; R's Exh. 38; R's Exh. 43; R's Exh. 48; R's

⁶ Then-four-and-a-half-year-old NT did not want to speak with the worker assigned to the case.

Exh. 52; R's Exh. 55) The father also claimed that the mother was intentionally alienating the children from him. (R's Exh. 32; R's Exh. 48; FH TX, p. 308) The mother countered with claims of domestic violence and child abuse. (R's Exh. 9, p. 09218; R's Exh. 43, p. 6; R's Exh. 59) Respondent addressed these motions by issuing orders for specific parenting time schedules and for psychological evaluations and counseling for the family. (R's Exh. 6; R's Exh. 10; R's Exh. 16; R's Exh. 18; R's Exh. 22; R's Exh. 25; R's Exh. 60) On July 24, 2013, Respondent issued an order that if either *party* failed to comply with the court's orders, they would be subject to contempt of court and "20 days for the first violation and 40 days for subsequent violation." (Emphasis provided) (R's Exh. 34)

In August of 2014, Respondent entered a stipulated order for the father to visit with the children on August 21 and August 22, 2014, in Respondent's jury room. (R's Exh. 41; E's Exh. 69, p. 3) On August 21, when the children refused to leave the hallway and enter the jury room, (E's Exh. 69, p. 3) Respondent summoned several Oakland County Sheriff's Deputies, Friend of the Court (FOC) Counselor Tracey Stieb, and Oakland County Assistant Prosecutor Lisa Harris to advise the children about following the court's orders. (E's Exh. 69, p. 3; FH TX 314-316) Despite these adults' warnings, and Ms. Stieb's assurances that they will be safe, the children refused to meet with their father. (FH TX, p. 291; E's Exh. 69, p. 4)

After observing the situation through a small window in her courtroom door, (FH TX, p. 315) Respondent took the bench and made a record, warning the mother that she could be held in contempt of court for her children's actions and that the children could be placed at Children's Village. (FH TX, p. 316-317; E's Exh. 69, p. 3) Only the mother, the GAL and Ms. Harris were present for that hearing. (FH TX, p. 316) The mother was not represented by counsel. (FH TX, p. 314) Respondent rejected Ms. Harris' suggestion to appoint attorneys for the children and hold a contempt hearing "[that] afternoon" and adopted the GAL's suggestion to "give one more try" at getting the children inside the jury room with their father. (FH TX, p. 318) Thereafter, Respondent

went into the hallway and directed the children to go into the jury room. (E's Exh. 69, p. 4; FH TX, p. 318) Although reluctant, the children obeyed. (E's Exh. 69, p. 4; FH TX, p. 318-319) On August 22, 2014, the children went into the jury room without any intervention from the court. (R's Exh. 42)

In November of 2014, the GAL filed a 25-page report outlining the history of the parenting time issues. (Rs Exh. 43; E's Exh. 69, p. 7, par. 9) In the report, the GAL opined that the mother was resistant to any therapy for the children, that she was not encouraging them to participate in parenting time, and that she believed that their attitude towards their father was an acceptable status quo. (R's Exh. 43; E's Exh. 69, p. 16) The GAL suggested a "draconian approach" which he explained as placing each child in the father's car "for parenting time without the mother for several hours." (R's Exh. 43) The GAL also opined that the father "needs to consider moving back to Michigan." (R's Exh. 43, p. 25).

On February 23, 2015, after moving back to the US, the father filed a Motion to Show Cause alleging the mother's continued disregard of the court's parenting time orders and her continued alienation of the children from him. (R's Exh. 48; E's Exh. 69, p. 17, par. 10) On March 4, 2015, the parties agreed to a specific parenting time schedule. Respondent entered an order reflecting the parties' agreement and adjourned the show cause to April 14, 2015. (R's Exh. 50; E's Exh. 69, p. 17, par. 13) In the same order, Respondent provided that if the children continued not to communicate with their father, they were to lose "TV, electronics, friends, etc." (R's Exh. 50; FH TX, p. 320-321) Respondent also prohibited the mother from providing the children any food on the days that they refused to eat while in the father's custody. (R's Exh. 50) The children were not in court when that order was issued. (FH TX, p. 31-32) In fact, every order in the Tsimhoni matter was directed to the parents. In the five years that the case was pending on Respondent's docket, the children never appeared on the record before Respondent prior to June 24, 2015. (FH TX, p. 31-32)

In March of 2015, the mother filed a motion to suspend the father's parenting time with RT. (R's Exh. 55; E's Exh. 69, p. 18, par. 16) The mother claimed that the father had physically abused his ten-year-old son during a visit. (R's Exh. 55; E's Exh. 69, p. 4) On March 23, 2015, following testimony from the parenting time supervisor, Art Gallagher, Respondent ruled that the evidence was insufficient to grant the mother's motion.⁷ (E's Exh. 69, p. 4; R's Exh. 55; R's Exh. 59)

In April of 2015, the mother agreed to spend a day in the court's lock-up for failing to bring the children to a scheduled parenting time with their father. (E's Exh. 69, p. 19; FH TX, p. 324-328) The original agreement of the parties and the corresponding order of the court required the mother to spend the entire day in the lock-up area. (E's Exh. 69, p. 19-20; FH TX, p. 324-326) However, when Respondent learned that after 12:00 PM the mother would have to be transported and processed at the Oakland County Jail, (E's Exh. 69, p. 20; FH TX, p. 326) Respondent permitted the agreement and order to be modified. (E's Exh. 69, p. 20; FH TX, 326-327) In exchange for volunteering for two days at an animal shelter, the mother was released from the court's lock-up at 12:00 PM.⁸ (E's Exh. 69, p. 20)

At a June 23, 2015, review of the mother's compliance with the court-ordered parenting time, father's attorney, Keri Middleditch, advised Respondent that the children were still not interacting "well" with their father. (E's Exh. 69, p. 22; E's Exh. 10, p. 4-5; E's Exh. 138 at 10:28:25) Once again, Respondent warned the mother that she could face additional jail time if the children's interaction with their father did not improve. (E's Exh. 69, p. 24; E's Exh. 10, p. 15; E's Exh. 138, at 10:42:20; FH TX, p. 36) Respondent signed a stipulated parenting time order for two of the children, RT and NT, to visit with their father on June 24, 2015, in the court's jury room. (E's Exh. 41; E's Exh. 69, p. 24, par. 24; FH TX, p. 34-35) The order scheduled parenting time with LT

⁷ Although the matter was adjourned for the mother to present additional witnesses and/or medical documents, there is no evidence that such a hearing was ever held. (E's Exh. 1)

⁸ Although the original order called for the mother and children to tour Children's Village, there is no evidence that they ever did.

for July 14, 2014, after the father's return from a business trip. (E's Exh. 41; FH TX, p. 34-35; FH TX, p. 259-260; E's Exh. 10, p. 8; E's Exh. 138, at 10:33:28)

On June 24, 2015, RT and NT appeared as scheduled. (E's Exh. 69, p. 4) As provided in the June 23 order, at approximately 9:00 am, RT entered the jury room to begin his two-hour visit with his father. (FH TX, p. 39-40) When Respondent learned that the visit was not "going well" (E's Exh. 69, p. 4; FH TX, p. 40-41), she entered the jury room and observed RT crying. (E's Exh. 69, p. 4; FH TX, p. 42-44) When RT explained that he did not want to participate in the visit because his father had previously assaulted him, Respondent advised him that she had already determined that there wasn't enough evidence to support his claim. (FH TX, p. 44-45; E's Exh. 69, p. 4) Because of RT's comment that he always listened to his mother, (E's Exh. 69, p. 5) Respondent left the jury room and wrote out a statement/script for the Plaintiff-mother to read to the children. (FH TX, p. 51, p. 333; E's Exh. 69, p. 5) Included in that statement/script were such comments as "kids, your dad loves you," "he will not harm you," "your dad wants to be in your life," "I want him to be in your life," "he will not harm me," and "I want you to spend time with your dad and to have a good relationship with your father." (E's Exh. 69, p. 5)

Shortly thereafter, Respondent re-entered the jury room with the mother. Present inside the jury room were the father, RT and NT, the parenting time supervisor, and the FOC counselor. (E's Exh. 69, p. 5) LT, who had accompanied his siblings that morning, entered the jury room with his mother. (FH TX, p. 52) After the mother read the script, Respondent left the jury room. (E's Exh. 69, p. 5; FH TX, p. 52) At approximately 11:30 AM, (FH TX, p. 105) when Respondent learned that parenting time was still not "going well," she re-entered the jury room and announced that she was appointing attorneys for each of the children and would hold a contempt of court hearing against them. (E's Exh. 69, p. 5; FH TX, p. 53-54, p. 334)

Respondent appointed attorneys Jeffrey Schwartz for LT, Michael Dean for RT, and Karen Cook for NT. (E's Exh. 69, p. 25-26; FH TX, p. 54) The attorneys were not provided any

opportunity to review any pleadings or court orders. (FH TX, p. 72, p. 102, p. 141) The only information they had prior to the contempt hearings was a brief “on the fly” outline of the situation from the GAL. (FH TX, p. 72, p. 102, p. 116, p. 141) The first contempt hearing, against thirteen-year-old LT, commenced at 12:07 pm. (E’s Exh. 152, p. 4; E’s Exh. 139, at 12:07:13)

In response to the Court’s question of what he had to say, LT apologized for not understanding the rules. (E’s Exh. 152, p. 5; E’s Exh. 139, at 12:08:10; E’s Exh. 69, p. 26-27) He further explained that because of his father’s violence and because he had observed his father hit his mother, he did not wish to apologize to his father or to speak to him. (E’s Exh. 152, p. 5; E’s Exh. 139, at 12:08:24) Without any further inquiry, Respondent found LT in contempt of court, stating that he had disregarded a direct court order to have a “healthy relationship with [his] father” and to “talk to his father.” (E’s Exh. 152, p. 5; E’s Exh. 139, at 12:08:39) Respondent ruled that LT was a “defiant and contemptuous young man” and that he would spend the rest of the summer in Children’s Village. (E’s Exh. 152, p. 5; E’s Exh. 139, at 12:08:56)

When LT expressed confusion as to what he had done wrong, Respondent stated that she doubted that he had a high IQ, that he was defiant, and that he had no manners. (E’s Exh. 152, p. 6; E’s Exh. 139, at 12:09:39) Respondent also advised LT to do research on Charlie Manson and his cult and that based on his behavior “months ago” in the hallway and in her courtroom, he had “bought himself living in Children’s Village, going to the bathroom in public, and possibly summer school.” (E’s Exh. 152, p. 7, p. 10, E’s Exh. 139, at 12:11:02; at 12:11:26) Respondent ruled that the mother was not allowed to visit LT during his confinement and that the only persons permitted any contact was the father, LT’s attorney, and any therapists. (E’s Exh. 152, p. 7, E’s Exh. 139, at 12:11:33) While thanking Mr. Schwartz for accepting the court’s appointment, Respondent told LT that he was “clearly – clearly very messed up.” (E’s Exh. 152, p. 8; E’s Exh. 139, at 12:11:43)

Respondent continued by telling LT that she had wanted to “do this” because of his “horrific behavior” a long time ago and that he was “so mentally messed up.” (E’s Exh. 152, p. 9, p. 11; E’s

Exh. 139, at 12:11:51; at 12:13:04) While using the words “mentally messed up,” she pointed the fingers of her right hand to her right temple. (E’s Exh. 152, p. 9; E’s Exh. 139, at 12:13:18) Although Respondent initially set the case for review in September of 2015, at the conclusion of the hearing she changed it, setting it for when LT turned 18. She then added:

Unless you, for whatever reason, talk to your dad and your dad comes to me and says...”Judge Gorcyca, I – my son has seen the light and he’s changed and can – can you let him out? And he’s – wants to have a relationship with me.” And then I’ll do it, so.

(E’s Exh. 152, p. 9; E’s Exh. 139, at 12:13:35) Turning her attention to the father, Respondent then stated,

Dad, if you ever think that he has changed and therapy has helped him and he’s no longer like Charlie Manson’s cult, then you let us know and we can do it.

While referring to LT no longer being “like Charlie Manson’s cult,” Respondent used her right index finger to make circular motions around her temple. (E’s Exh. 152, p. 10; E’s Exh. 139, at 12:14:05)

Rejecting the mother’s pleas, in person and through her attorney, to speak to her son, Respondent advised the Oakland County Sheriff’s deputy that she was “all set.” (E’s Exh. 152, p. 11; E’s Exh. 139, at 12:14:14) LT was then handcuffed and removed from the court. (E’s Exh. 152, at 10-11; E’s Exh. 139 at 12:15:00) This hearing was witnessed by nine-year-old NT who was seated in the courtroom still waiting for her attorney to appear. At 12:16:09, the court staff advised NT that her attorney was present. (E’s Exh. 152, p. 12; E’s Exh. 139 at 12:16:09)

When the case was recalled for the two younger children at 12:33 PM, NT was crying and visibly shaking and remained so during the entire proceeding. (MR, p. 23; E’s Exh. 139, at 12:33:59) At the outset, NT’s attorney, Karen Cook, advised Respondent that she still did not have a “complete narrative” on everything her client had done, and that despite her advice that NT apologize to the court for “whatever” she had done, NT was not cooperative. (E’s Exh.152, p. 13; E’s Exh. 139, at 12:34:29) Without addressing the attorney’s concerns, Respondent remarked,

“Oh, it’s so interesting. So interesting” and continued the hearing. (E’s Exh. 152, p. 13; E’s Exh.139, at 12:34:56)

Reading from a note, ten-year-old RT apologized to the court and to his father. (E’s Exh. 152, p. 15-16; E’s Exh. 139, at 12:37:01; E’s Exh. 69, p. 32, par. 36) Prompted by his attorney, Michael Dean, RT added that he would communicate with his father at future visits. (E’s Exh. 152, p. 16; E’s Exh. 139, at 12:37:20) When Respondent asked NT “what do you want to say” (E’s Exh. 152, p. 16; E’s Exh. 139, at 12:38:03) the nine-year-old was unable to answer. Within seconds, Respondent announced that she was “taking that as a no” and that “[NT] doesn’t want to say anything.” (E’s Exh. 152, p. 17; E’s Exh.139, at 12:38:14) When NT reached for her brother’s note, Respondent stated:

No, No, [NT] don’t read what your brother wrote. You’re your own person. Do you know what? I know you’re kind of religious. God gave you a brain. He expects you to use it. You have a brain. You are not your brother.

(E’s Exh. 152, p. 17; E’s Exh. 139, at 12:38:20; E’s Exh. 69, p. 32, par. 40)

Referring to LT, Respondent advised NT that she was not her “big defiant brother who’s living in jail,” and asked whether NT also wanted to live in jail. (E’s Exh. 152, p. 17; E’s Exh. 139, at 12:38:30) In a shaking and cracking voice, NT apologized to Respondent and stated that she would “try to work with [her] father at visits.” (E’s Exh. 152, p. 17; E’s Exh. 139, at 12:39:01) Not satisfied, Respondent advised both children that they would “have to stay here all day” and that “it will be up to [their] dad.” (E’s Exh. 152, p. 18; E’s Exh. 139, at 12:39:10) Respondent continued with comments such as “you know what that would do to your mother, going home, riding down the elevator without you?” “Can you guys think about someone besides yourself?” “You should be thinking about your father and what your father has gone through...” (E’s Exh. 152, p. 18; E’s Exh. 139, at 12:39:24) In a raised voice, Respondent informed RT and NT that it was “despicable” what their father had gone through and that she was upset with each of them, even more upset with

their older brother, and would not even say what she thought of their mother. (E's Exh. 152, p.18; E's Exh.139, at 12:39:50) Respondent finished by telling the children that she liked their father and that she would be their judge for the next five and a half years. (E's Exh. 152, p. 18; E's Exh. 139, at 12:40:05)

Directing her comments to NT, Respondent asked whether the nine-year-old would like to have her birthdays in Children's Village, whether her bed at home was soft and comfortable, and whether she liked going to the bathroom in front of other people. (E's Exh. 152, p. 18; E's Exh. 139, at 12:40:09) Respondent warned that if the children did not have a "nice" lunch with their father, she would have the deputies take them to Children's Village. (E's Exh. 152, p. 19; E's Exh.139, at 12:40:27) As with their older brother, Respondent advised RT and NT that she had wanted to "do this" to them many times before and that she did not only because their father asked her not to. (E's Exh. 152, p. 19; E's Exh. 139, at 12:40:49) Respondent made it clear that "the ball is in your dad's court." (E's Exh. 152, p. 19; E's Exh. 139, at 12:41:00)

When RT and NT chose to go with LT rather than have lunch with their father, Respondent burst out in laughter, stating, "[t]his is ridiculous, I have to say." (E's Exh. 152, p. 21; E's Exh.139, at 12:42:08) She also told RT and NT that while at Children's Village they would not have any contact with each other and they would be in separate "cells." (E's Exh. 152, p. 20; E's Exh. 139, at 12:41:43; E's Exh. 45, 46, 47) She continued by repeatedly telling RT and NT that they have been brainwashed, that they were not normal, and that they would live in Children's Village until they graduated from high school. (E's Exh. 152, p. 18, p. 19; p. 21; E's Exh.139, at 12:39:20, 12:39:30, 12:41:07, 12:40:17, 12:42:23, 12:42:24, 12:42:34, 12:43:06) As NT openly sobbed, Respondent announced that neither the mother nor anyone from her "side" could have any contact with the children during their confinement. (E's Exh. 152, p. 22; FH TX, p. 12:42:51) Respondent concluded the hearing by telling the children that when their father told her that they are ready to have lunch with him and when they are ready to be normal human beings, she would review their

matter. (E's Exh. 152, p. 22; FH TX, p. 139, at 12:43:05) She concluded by stating, "[t]hat's the order of the court. Goodbye." (E's Exh. 152, p. 22; E's Exh. 139, at 12:43:13) Like their older brother, RT and NT were removed from the courtroom in handcuffs. (E's Exh. 139, at 12:43:20) Respondent had no further on-the-record hearings in the case for two and a half weeks.

On July 10, 2015, Respondent held a hearing which she claimed she had called to address what was in the "best interests of the children." (R's Exh. 87, p. 5; R's Exh. 88, at 2:14:12) After establishing a telephonic connection with the father, who was in Israel, (E's Exh. 87, p. 5; R's Exh. 88, at 2:13:59) Respondent began the hearing by stating that as a result of a local media outlet breaking the story "without getting all the facts straight," (R's Exh. 87, p. 5-6; R's Exh. 88, at 12:14:53 ; E's Exh. 69, p. 46, par. 66) the case had "garnered national attention" and created an unjustified "hysteria." (R's Exh. 87, p. 5; R's Exh. 88, at 2:14:52) Admitting that the children's placement in Children's Village was not ideal, Respondent defended herself by stating that neither the parties nor any of the attorneys had objected to the children's placement and that no one had offered any other alternatives. (R's Exh. 87, p. 5, p. 8; R's Exh. 88, at 2:14:32: at 2:18:10)

Respondent also claimed that her June 24, 2015, action was not intended to punish the children but to "assist [them] in developing meaningful relationships with their father" (R's Exh. 87, p. 8-9; R's Exh. 88, at 2:18:32; E's Exh. 69, p. 48, par. 68 e) through "independent, objective, and caring counseling outside the influence of both parents." (R's Exh. 87, p. 10; R's Exh. 88, at 2:20:28) Respondent noted that "contrary to what has been reported, these children have not been locked up" but have been placed in Mandy's Place, a "non-secure safe environment on the grounds of Children's Village." (R's Exh. 87, p. 11; R's Exh. 88, at 2:21:33)

The children's attorneys⁹ advised the court that their clients still did not want to participate in parenting time with their father and wished to return to their mother. (R's Exh. 87, p. 14-16; R's Exh. 88, at 2:25:25) The GAL, William Lansat, confirmed those representations and set out the

⁹ Michael Dean stood in for Karen Cook.

history of the mother's refusal to cooperate with the court's parenting time orders and her inability or refusal to see anything wrong with the children's lack of interaction with their father. (R's Exh. 87, p. 18; R's Exh. 88, at 2:29:45) The GAL acknowledged that the children did not "belong in Children's Village" and that it was "not possible to force these children...to talk, move their mouth, [or] love their father." (R's Exh. 12, p. 21; R's Exh. 88, at 2:33:25)

Following a short recess, Respondent dismissed the contempt against the children and adopted the GAL's and father's recommendation to have them attend Camp Tamarack, which was to be followed by parental alienation counseling. (R's Exh. 87, p. 21, p. 23, p. 34; R's Exh. 88, at 2:33:55; at 2:35:15; at 2:36:08) Respondent also set July 20, 2016, as a new review date. At the conclusion of the hearing, LT's attorney, Jeffrey Schwartz,¹⁰ stated that the children's attorneys had planned on filing an appeal of the court's June 24, 2015, decision but that in view of the dismissal of the contempt against their clients that was no longer necessary. (R's Exh. 87, p. 36; R's Exh. 88, at 2:38:02).

¹⁰ Contrary to the transcript, the video of the proceedings shows that this statement was made by Jeffrey Schwartz.

ARGUMENT

I. INTRODUCTION AND SUMMARY

Adopting the Master's findings of fact, the Commission concluded, as did the Master, that the Examiner had established Count I by a preponderance of the evidence. The Commission found that on June 24, 2015, Respondent committed misconduct when she held LT, RT, and NT in contempt of court. (D&R, p. 15; MR, p. 30) The Commission found that Respondent improperly held LT in contempt of court for refusing to engage in parenting time with his father on June 24, 2015, when the only order applying to him called for him to visit with his father on July 14, 2015. (D&R, p. 18) The Commission also found that Respondent committed misconduct when, after ordering LT, RT, and NT, confined to Children's Village, she delegated to a third party the discretion to determine when they had purged themselves of contempt. (D&R, p. 18)

The Commission acknowledged the frustrations of a judge who is confronted with trying to bring children together with an estranged parent. (D&R, p. 18) The Commission also acknowledged that "mere legal errors" in contempt proceedings are "not grounds for a finding of judicial misconduct." (D&R, p. 16) The Commission determined, however, that Respondent "crossed the line from legal error to misconduct when those frustrations led her to abuse three children in the middle of a war zone that their parents' divorce case had become." (D&R, p. 18)

In reaching that conclusion, the Commission and the Master relied on the overwhelming evidence of Respondent's improper actions during the June 24, 2015 contempt proceedings, including her use of insulting, demeaning, and humiliating language. (D&R, p. 18) The Commission found that Respondent's "intemperate language," may have been misconduct even if directed against adults and was "unacceptable" when directed to children. (D&R, p. 17) Comparing Respondent's behavior to that of a "bully" (D&R, p. 17) and a "grown-up barking commands that [children] cannot understand," (D&R, p. 17) the Commission found that Respondent's actions from

the bench were “unacceptable” because they struck at the heart of the proper role of a judge when dealing with children, i.e. to be a safe haven, a refuge, and a source of guidance. (D&R, p. 17)

The Commission also determined that Respondent’s answer to the Commission’s 28-Day Letter in which she stated that she “believed” that the circular motion she had made at her temple was referring to the therapy that LT would soon be receiving at Children’s Village, while not actionably false, was intentionally misleading.

The Commission recommended that the Court suspend Respondent for 30 days, without pay, from the office of judge of the 6th Circuit Court. The Commission also recommended, based on the misleading nature of Respondent’s answer to the Commission’s 28-Day Letter, that the Court order Respondent to pay costs, fees, and expenses in the amount of \$12,553.73, pursuant to MCR 9.205 (B).

II. ACTS OF JUDICIAL MISCONDUCT

A. COUNT I – MISCONDUCT ON JUNE 24, 2015

As the Commission stated in its Decision and Recommendation, Respondent committed misconduct by using the “awesome judicial power of contempt to vent her frustration on three children because she wanted them to have a better relationship with her (sic) father.” (D&R, p. 17) Contrary to Respondent’s arguments, the Commission and the Master did not exceed their jurisdiction by inappropriately deciding alleged legal errors. (R’s SC Brief, p. 17) The Commission acknowledged that “mere legal errors in contempt proceedings are not grounds for a finding of judicial misconduct.” (D&R, p. 16) The Commission also acknowledged that Respondent may have been frustrated by being confronted with the intractable problem of trying to bring children together with an estranged parent. (D&R, p. 18) The Commission found, however, that Respondent allowed her frustrations to “abuse three children in the middle of the war zone that their parents’ divorce had become.” (D&R, p. 18)

Respondent detained the Tsimhoni children and incarcerated them for 17 days. She did not allow them to have any contact with their mother or with each other. (MR, p. 30-34) She also failed to act in a patient, dignified, and judicial manner, laughed at and ridiculed the children, called them abnormal and brainwashed, and compared one of them to a cult of mass murderers. (D&R, p. 17-18; E’s Exh. 152, p. 7, p. 8, p. 9, p. 10, p. 21; E’s Exh. 139, at 12:09:44, at 12:11:04, at 12:11:55, at 12:13:20, 12:14:08) As the Commission found, Respondent’s misconduct “transcend[ed] any legal error made during the proceedings before her on June 24, 2015.” (D&R, p. 16) The testimonial, documentary, and video evidence admitted at the formal hearing overwhelmingly supports the Commission’s findings.

Respondent’s statements and demeanor during LT’s contempt hearing clearly contradict her assertions that she “cares so much about children,” that she had confined the Tsimhoni children in order to ‘assist [them] to develop a meaningful relationships with their father,’ and that her June 24,

2015 decision was properly administered, well thought out, and not carried out as punishment. (FH TX, p. 323; R's Exh. 87, p. 8; R's Exh. 88, at 2:18:31; E's Exh. 69, p. 2) Respondent's conduct also contradicts her claims and her testimony at the formal hearing that on June 24, 2015, she wanted "it to work" and "did not want to have a hearing." (FH, TX, p. 336) The Commission found that the record from the formal hearing showed a polite thirteen-year-old who apologized for anything he may have done to offend Respondent and calmly explained the reasons for his not wanting to interact with his father. (D&R, p. 17; E's Exh. 152, p. 6; E's Exh. 139, at 12:09:40) In response, Respondent berated him for not having a "healthy relationship" with the father, insulted his intelligence, told him that he had no manners, and told him that he will be confined to the Children's Village until he turns eighteen. (D&R, p. 17)

The video of the June 24, 2015 proceedings supports the Commission's finding. The video shows Respondent, increasingly angry and at times unable to pronounce words or complete sentences (E's Exh. 139, at 12:09:51; at 12:11:07; 12:11:32), tell LT that his behavior is "horrific," (E's Exh. 152, p. 9; E's Exh. 139, at 12:13:06) that he is "mentally messed up," (E's Exh. 152, p. 8, p. 9; E's Exh. 139, at 12:11:55; 12:13:20) and that she had wanted to "do this a long time ago." (E's Exh. 152, p. 9; E's Exh. 139, at 12:13:09) Respondent also tells LT that he should do a research project on mass murderer Charles Manson and his cult. (E's Exh. 152, p. 8; E's Exh. 139, at 12:11:04) Referring to him as "the worst one in 46,000 cases," Respondent advises LT that he had "bought [himself] living in Children's Village, going to the bathroom in public, and maybe summer school." (E's Exh. 152, p. 7; E's Exh. 139, at 12:11:15).

On four separate occasions during the eight-minute hearing, (E's Exh. 152; E's Exh. 139) while speaking to or about LT, Respondent questioned or insulted his intelligence either verbally or through gestures. Rather than explaining why he was in contempt of court, Respondent remarked, "You're supposed to have a high IQ, which I'm doubting right now because of the way you act." (E's Exh. 152, p. 6; E's Exh. 139, at 12:09:42) Less than a minute later, while complimenting Mr.

Schwartz for being an excellent lawyer, Respondent turned to LT and stated, “You’re clearly – clearly messed up. Very messed up.” (E’s Exh. 152, p. 8; E’s Exh. 139, at 12:11:55) Respondent repeated that phrase a few seconds later. As she did, she used the fingers of her right hand to point to her right temple. (E’s Exh. 152, p. 9; E’s Exh. 139, at 12:13:20) Less than a minute later, while telling the father to let her know when his son was “normal” and “no longer like Charlie Manson’s cult,” Respondent again used her right index finger, that time to make circles at her temple. (E’s Exh. 152, p. 10; E’s Exh. 139, at 12:14:07)

Respondent’s explanation that the Manson term (first used by the GAL in one of his reports) was a “shorthand” reference for the children’s behavior (R’s Ans. to FC, p. 18, par. 55; E’s Exh. 69, p. 30, par. 32) does not make Respondent’s use of it in open court to LT any less offensive. As the GAL William Lansat testified at the formal hearing, his Manson reference was meant for Respondent, the attorneys, and the parties, and not the children. (FH TX, p. 243) Contrary to her testimony that she “does not insult those who come before [her],” (FH TX. p. 342) Respondent’s degrading comments and gestures went beyond stern language and constituted unacceptable judicial behavior. (D&R, p. 17-18; MR, p. 18)

In a clear attempt to intimidate and punish, Respondent concluded LT’s hearing by re-setting the review of his contempt from September of 2015 to when he turned 18.¹¹ (E’s Exh. 152, p. 10; E’s Exh. 139, at 12:14:03) In effect, she was imposing a five-year sentence, in what she represented to be a jail-like setting, on a 13-year old. Respondent’s claim that she never intended to have a hearing and never wanted to confine the children is untrue. (FH TX, p. 334) Even before LT’s hearing was concluded, the mother, through her attorney, made several requests to speak to her son in an effort to change his mind about not speaking to his father. (E’s Exh. 152, p. 10-11; E’s Exh. 139, at 12:14:16), Respondent denied the mother’s request, stating,

¹¹ Although the June 24, 2015 hearing transcript indicates that LT represented his age to be 15, he was 13 at the time of the June 24, 2015 hearing.

She's already done that. He's a defiant child. He's... you're child and you're defiant....No... No.

(E's Exh. 152, p. 10; E's Exh. 139, at 12:14:25) Respondent also barred LT's mother from having any contact with him during his confinement. (E's Exh. 152, p. 7; E's Exh. 139, at 12:11:31; at 12:12:05) After LT was handcuffed, Respondent refused the mother's request to say goodbye to her son. (E's Exh. 152, p. 10; E's Exh. 139 at 12:14:15) As the Commission observed, "Missing from [Respondent's] actions [was] any recognition that the order she signed the previous day did not order LT to have visitation with his father for another three weeks, and that her order did not specify the quality of the visitation." (D&R, p. 17)

Respondent's argument that LT's contempt was for refusing to obey an order she had given to him and his siblings on June 24, 2015 in the jury room (R's Brief, p. 12-13; R's Obj. to MR, p. 12) is not supported by the evidence. Respondent raised this argument for the first time in her Objections to the Master's Report which were filed with the Commission on August 5, 2016. She did not make that factual allegation in her answer to the 28-day letter, she did not testify to it at the hearing, and she offered no other evidence about it.

The court speaks through its written orders. (MR, p. 18-20) *Tiedman v Tiedman*, 400 Mich 571 (1977). On June 24, 2015, only the two younger children were under a written court order, issued on June 23, 2015, compelling them to appear for parenting time with their father. (E's Exh. 41) The June 23, 2015, court order expressly provided that LT was not scheduled for parenting time until July 14, 2015. On June 24, 2015, LT was present only because he "had accompanied his mother to court while she took his younger siblings for their scheduled visitation with their father." (D&R, p. 7; MR, p. 19)

Although a verbal order can have the force and effect of a written order, such verbal order must contain "indicia of formality and finality comparable to that of a written order." *Arbor Farms LLC v Geostar Corporation*, 305 Mich App 374, at 388 (2014) (citations omitted). In *Arbor Farms*,

supra, the Michigan Court of Appeals found such an “indicia of formality and finality” where the trial court’s oral clarification of a written order was *on the record* and was followed by the court’s pronouncement, “[T]his is the ruling of the court.” *Id* at 388. (Emphasis provided)

Even assuming, arguendo, that on June 24, after the mother’s reading of the statement/script, Respondent directed LT and the other children, “to participate in parenting time” (R’s Ob. to MR’s Rpt., p. 3, p. 12, p. 23), there is absolutely no evidence of any indicia of formality and finality to that directive. Not only was the alleged statement not made on the record, it was not, by any stretch of the imagination, an *order of the court*. There is simply *no* evidence that Respondent gave such a directive to LT. All evidence, including Respondent’s Answer to the Formal Complaint, her answers to the Commission’s 28-day letter, and her formal hearing testimony before the Master, points to the contrary.

In her Answer to the Formal Complaint, Respondent did not refer to any verbal orders being given to LT in her jury room. Likewise, in the 28-day letter (E’s Exh. 69), a document she signed, Respondent did not refer to any verbal orders to LT. Rather, Respondent claimed that after the mother read the statement/script to the three children and added a few words in Hebrew,

Judge Gorcyca then left the jury room so that the family could talk to each other with the help of the Family Counselor (Tracey Stieb), the Guardian Ad Litem (William Lansat), and Mr. Bossory.

(R’s SC Brief, p. 12; E’s Exh. 69, p. 5) Respondent did not give any verbal orders to LT. This is made clear by her answer to the 28-Day Letter, in which she emphatically denied any verbal orders.

Q. On June 24, 2015, you found the Tsimhoni children in contempt of court for not following an unwritten order.

A. **The Hon. Lisa Gorcyca denies the truth of this statement.** On June 24, 2015, the children were found to be in direct civil contempt of the Court for failing to comply with the parenting-time **Order of this court dated June 23, 2015** as well as for repeatedly failing to respect and obey the previous parenting-time orders of the Court, despite the court’s warnings and admonitions that confinement to Children’s Village would result. (Emphasis provided)

(E's Exh. 69, p. 44, par. 61)

Respondent also did not refer to any verbal orders to LT during her testimony at the formal hearing. In fact, she denied that she had ordered LT to be brought into the jury room and claimed that it was a decision made by the lawyers. (FH TX, p. 52) Respondent also insisted that the directive she gave RT to "talk to" his father in the jury room was a "strong suggest[ion]" rather than an order.¹² (FH TX, p. 48)

Respondent testified at the formal hearing that after she had witnessed the mother read the statement/script,

Well, actually, I guess I do leave. I think – I think I left. I wanted them to – *I thought that was going to be enough.* And, quite frankly, I thought I would never see them that day. So that was supposed to be enough. (Emphasis provided.)

(FH TX, p. 52) As to what was supposed to have been "enough," Respondent explained,

That was supposed to work to get these three children to have regular parenting time with their father. Because now their mother is saying it and using my stern words, not words like do you like – do want to see your father? No. You're going to see your father. He wants to see you. I want you to see him.

(FH TX, p. 52-53) In short, Respondent's novel proposition that on June 24, 2015, she gave a verbal order to LT to participate in parenting time with his father, raised for the first time in Respondent's Objections to the Master's Report, is an after-the-fact reaction to the Master's finding that Respondent committed misconduct by finding LT in contempt of court for violating a non-existent order.

Not only was LT not under any orders to have parenting time on June 24, 2015, Respondent had no authority to conduct his or his siblings' hearing in a summary fashion. In order to hold a summary contempt hearing, the contemptuous act must have occurred "in view and presence" of the

¹² Respondent's directive to RT came during RT's parenting time with his father in the jury room when only RT, his father, the parenting time supervisor Art Gallagher, FOC Family Counselor Tracey Stieb, and Respondent were present.

court. Contrary to Respondent's claim (R's SC Brief, p. 13; R's Obj. to MR's Rpt., p. 12-13), LT's alleged contempt did not occur in her *direct view and presence*. As the Michigan Supreme Court stated,

‘...[i]mmediate view and presence’ are words of limitation, and exclude the idea of constructive presence. The immediate view and presence does not extend beyond the range of vision of the judge, and the term applies only to such contempts as are committed in the face of the court. Of such contempts, he may take cognizance of his own knowledge, and may proceed to punish summarily such contempts, basing his actions entirely upon his own knowledge.

In re Wood, 82 Mich 75, 82 (1890)

If a judge must rely on the testimony of other persons to establish the case against the contemnor, the contempt becomes indirect and, consistent with the requirements of Due Process, may be punished only “...after proof of the facts charged has been made by an affidavit or other method and after an opportunity has been given to defend.” *In re Contempt of Robertson (Davilla v Fischer Corp)*, 209 Mich App 433, 438 (1995); see also *In re Scott*, 342 Mich 614 (1955); MCR 3.606; MCL 600.1711(2) It is undisputed that Respondent was not present in the jury room when LT allegedly refused to speak with his father. It is also undisputed that in finding LT in contempt of court, Respondent was not relying on her own observations but on information she had received from “another person.” (D&R, p. 7; E's Exh. 69, p. 5; FH TX, p. 53) Finally, it is undisputed that affidavits were not filed in support of LT's contempt hearing. As the Master stated, “...any contempt [by LT] such as refusing to talk to his father, [committed] outside the court's immediate presence would have been indirect and not direct contempt.” (MR, p. 19) (Emphasis in the original.)

Respondent's attempt to establish the requisite “personal knowledge” for a summary direct contempt hearing by relying on LT's statements during the contempt hearing itself (R's Obj. to MR's Rpt., p. 12) is improper. Clearly, the contemptuous act must have been committed *prior* to the commencement of the summary contempt hearing and *not after*. *In re Dougherty*, 429 Mich 81

(1987) By holding a contempt hearing before the contemptuous act had occurred, Respondent committed misconduct.

Respondent also committed misconduct by displaying improper and unacceptable judicial behavior during the June 24, 2014, contempt hearing for RT and NT. (D&R, p. 17) After RT apologized to the court and told his father, with the aid of a written note, that he would make an effort to communicate with him, (D&R, p. 17) Respondent turned to nine-year-old NT. NT was crying and visibly upset after witnessing LT being sentenced to jail, handcuffed, and escorted out by the deputies. (D&R, p. 17) Having spent less than 20 minutes¹³ with her young client (FH TX, p. 72), NT's attorney, Karen Cook, made it clear that she did not have a "complete narrative" as to everything that NT had "allegedly [done] wrong" and that she had advised NT to "apologize for **whatever** she did." (Emphasis provided) (E's Exh. 152, p. 13; E's Exh. 139 at 12:34:30; MR, p. 23). Completely ignoring that concern, Respondent continued the hearing by asking NT what she wanted to say. (E's Exh. 152, p.16; E's Exh. 139, at 12:38:01) When NT did not immediately respond, Respondent announced that she was taking it as a refusal to cooperate. (E's Exh. 152, p. 17; E's Exh. 139, at 12:38:13) As NT reached for her brother's note, (D&R, p. 17) in an angry and raised voice Respondent added:

No, No, [NT] don't read what your brother wrote. You're your own person. Do you know what? I know you're kind of religious. God gave you a brain. He expects you to use it. You have a brain, you are not your brother. You are not your big, defiant brother who's living in jail. Do you want to live in jail, just tell me this right now.

(E's Exh. 152, p. 17; E's Exh. 139, at 12:38:20)

Even after NT apologized and promised to cooperate during parenting time with her father, Respondent remained angry. Respondent's statements to RT and NT at the June 24, 2015, hearing sounded more like threats than assurances of a safe environment as she claimed in her 28-day letter.

¹³ The video indicates that NT's attorney checked in with the clerk of the court at 12:16:09. RT's and NT's contempt hearing commenced at 12:33:58.

(D&R, p. 17; E's Exh. 69, p. 35-36, par. 47) Respondent advised both children that they would remain at the courthouse all day, (E's Exh. 152, p.18; E's Exh. 139, at 12:39:10) that they would be under constant camera surveillance, (E's Exh. 152, p.19-20; E's Exh. 139, at 12:39:10; at 12:41:08; at 12:41:21) and that they would either have a nice lunch with their father or be taken to Children's Village, (D&R, p. 17; E's Exh. 152, p. 18; E's Exh. 139, at 12:39:20; at 12:40:28) where they could "hang out" with the "other children" Respondent had sent there. (E's Exh. 152, p. 19; E's Exh. 139, at 12:41:20)

Contrary to her claim that on June 24 she wanted to "help the [Tsimhoni] family," (R's SC Brief, p. 20; E's Exh. 69, p. 50) Respondent sarcastically reminded the distraught nine-year-old that she would "be a teenager soon," and asked whether she liked to have her birthdays at Children's Village, if her bed at home was nice and soft, and if she liked going to the bathroom in front of other people. (E's Exh. 152 p. 18; E's Exh. 139, at 12:40:10) In violation of the JOD,¹⁴ Respondent also advised both children that while she liked their father, she was very upset with the two of them, was even more upset with their older brother [LT], and would "not even say what [she thought] about [their] mother." (MR, p. 24; E's Exh. 152, p. 18; E's Exh. 139, at 12:39:51) As with LT, Respondent also made very clear that she wanted to "do this" many times before (E's Exh. 152, p.19; E's Exh. 139, at 12:40:52) and that she would remain as their judge for five-and-a-half more years. (E's Exh. 152, p. 18; E's Exh. 139, at 12:40:08)

When RT changed his mind about participating in parenting time with his father and advised the court that he would rather be with his brother, Respondent stated "You're not even going to be with your brother. That's cool. You won't be in the same cell. I'll put in there 'Stay away from your brother.'" (E's Exh. 152, p. 20; E's Exh. 139, at 12:41:42) This vindictive and retaliatory punishment was clearly not "in the best interests of the children." It was also not in RT's and NT's

¹⁴ Paragraph 2(e) of the JOD states that "neither parent shall do or say anything in the presence of the children that would portray the other parent in a negative light or that would tend to discredit or damage the love that the children have for the other parent. Each party acknowledges a duty to foster, encourage and support a strong and loving relationship between each child and the other parent."

best interest to see and hear Respondent openly burst into laughter and announce “this is ridiculous” when NT also chose to be with LT. (E’s Exh. 152, p. 21; E’s Exh. 139, at 12:42:08) Neither was it in the children’s best interests to hear Respondent repeatedly announce in open court that they were “brainwashed,” that “every single adult in [the] courtroom [thought that they were] brainwashed,” and that when they were ready to be “normal human beings” she would review the case, “when your father tells me you are ready.” (E’s Exh. 152, p. 21-22; E’s Exh. 139, at 12:42:17; at 12:42:23; at 12:42:32)

As with their older brother, Respondent sentenced RT and NT to remain at Children’s Village until they graduated from high school, (E’s Exh. 152, p. 22; E’s Exh. 139, at 12:43:10) which, as the Master had noted, is more akin to a criminal sentence than a civil contempt remedy. (MR, p. 20) Respondent also ordered that RT and NT have no contact with their mother, or each other, for the duration of their confinement. (E’s Exh. 152, p. 22; E’s Exh. 139, at 12:42:50) Signaling to the deputies that RT and NT could be removed from the court, Respondent ended the hearing by pronouncing, “That’s the order of the court,” and then dismissively telling the children, “Goodbye.” (E’s Exh. 152, p. 22; E’s Exh. 139, at 12:43:13)

In addition to the improper words and demeanor, the Commission found, as did the Master, that Respondent committed misconduct by delegating to a third party the discretion to determine when the children had purged themselves of contempt. (D&R, p. 18) By doing so, Respondent violated the most basic principle of civil contempt law, i.e. giving the contemnor the opportunity to purge his/her contempt, commonly referred to as giving the contemnor the “keys to the jailhouse door.” *In re Moroun*, 295 Mich App 312 (2012) The Commission’s and the Master’s findings are well supported by the evidence.

Nearing the end of LT’s contempt hearing, Respondent advised him that he would remain at Children’s Village unless,

...you, for whatever reason, talk to your dad and your dad comes to me and says..."Judge Gorcyca, I – my son has seen the light and he's changed and can – can you let him out? And he's – wants to have a relationship with me." And then I'll do it, so. (Emphasis provided)

(E's Exh. 152, p. 9; E's Exh. 139, at 12:13:35) Seconds later, after she had changed the review date to when LT turned 18, Respondent advised the father:

Dad, if you ever think that he has changed and therapy has helped him and he's no longer like Charlie Manson's cult, then **you let us know** and we can do it. (Emphasis provided)

(E's Exh. 152, p. 10; E's Exh. 139, at 12:14:05) Respondent made similar comments to RT and NT, likewise giving the father the right to determine when their confinement would end. When RT and NT choose to be with their older brother, Respondent stated:

When you are ready to have lunch with your father, to have dinner with your dad, to be normal human beings, I will review this **when your dad tells me you are ready**. Otherwise you are living in Children's Village til you graduate from high school. That's the order of the court. Goodbye. (Emphasis provided)

(E's Exh. 152, p. 22; E's Exh. 139, at 12:42:59) Even after the children were removed from the court, Respondent told the father,

I'm going to keep the attorneys for the review date, which will be September 8th at 9:00 am, unless, dad, you come earlier. Because you – you're going to – you're going to be on the approved list with Mr. Lansat. When the children say they're ready to have a relationship with you I will – **when you're ready to come in I'll do it that day**. (Emphasis provided.)

(E's Exh. 152, p. 22-23; E's Exh. 139, at 12:43:57)

Respondent's intent to give the father the exclusive right to determine when his children would be released from Children's Village is also clear from the written contempt orders Respondent issued on June 24, 2015. In the order pertaining to LT, (E's Exh. 45) Respondent set September 8, 2015, as a review date for the 13-year old's confinement and added that "**Dad may request earlier review** upon [LT] complying with Ct. (sic) order." (Emphasis provided) (E's Exh. 45, p. 2) Respondent set the same review date in the order pertaining to RT and NT, adding,

“**unless Dad requests earlier view (sic)** because children are having a healthy relationship with him and following Ct. (sic) order.” (Emphasis provided) (D&R, p. 12; E’s Exh. 46)

Respondent’s argument that the children could control their release date by simply deciding to talk to their father (R’s SC Brief, p. 24) ignores the fact that the father was out of the country and not available for at least two weeks after the June 24, 2015, hearing. (E’s Exh. 87, p. 8-9, E’s Exh. 138, at 10:33:28; FH TX, p. 259-260) As the Master noted, the July 10, 2015, hearing was held at the request of the GAL and not the father, who was still in Israel (MR, p. 26), a fact that was made clear to Respondent during the hearing conducted on June 23, 2015. (E’s Exh. 10, p. 8-9; E’s Exh. 138, at 10:33:28; FH, p. 259-260) Also erroneous is Respondent’s argument that giving the keys to the children’s freedom to the father did not matter because as of July 10, 2015, the children still did not want to talk to him. (R’s SC Brief, p. 26) It is irrelevant what the children wanted more than two weeks after the start of their confinement. The keys to the jailhouse door must be in the contemnor’s hands from the moment that he/she is confined.

The June 24, 2015, hearings were also improper because they were more akin to criminal than civil contempt proceedings. It is well established that the fundamental purpose of criminal contempt is to punish the contemnor for a *past* act, with a fixed jail sentence, a fine, or both, and thus to vindicate the authority of the court. *In re Contempt of Dougherty, supra; Gompers v Buck’s Stove & Range Co.*, 221 U.S. 418, 441 (1911) Respondent’s on-the-record comments that she had “wanted to do this a long time ago,” (E’s Exh. 152, p. 9, p. 19; E’s Exh. 139, at 12:11:51; at 12:40:50) that she had previously spoken to the children “over and over and over again,” (E’s Exh. 152, p. 11; E’s Exh. 139 at 12:14) and that other people, including her deputy had previously “tried to help” them, (E’s Exh. 152, p. 11; E’s Exh. 139, at 12:14:38) demonstrate that her decision to incarcerate the children was for their *past* behavior. This is reinforced by Respondent’s 28-day letter where, in response to an allegation that “[o]n June 24, 2015, when the children refused to speak [to]

or have lunch with their father, [she] decided to hold each child in contempt of court,” Respondent stated:

The Hon. Lisa Gorcyca denies the truth of this statement in part. Judge Gorcyca’s suggestion that [RT] and [NT] have lunch with Defendant Father on June 24, 2015 was a last ditch effort to provide the children with an opportunity *to follow the Court’s prior orders and cease their continuing contempt of those orders*. Judge Gorcyca did not hold the children in contempt for their refusal to have lunch with Defendant Father; instead, *when the children refused to honor the orders that came before*, Judge Gorcyca placed them at Children’s Village in an attempt to coerce their compliance with the parenting time orders of this Court.

(Emphasis provided) (E’s Exh. 69, p. 25, par 53) In the same 28-day letter, in response to the allegation that on June 24, 2015, she found the children in contempt of court for not following an unwritten order, Respondent provided the following response:

On June 24, 2015, the children were found to be in direct civil contempt of the Court for failing to comply with the parenting-time Order of this court dated June 23, 2015, as well as *for repeatedly failing to respect and obey the previous parenting-time orders of the Court*, despite the court’s warnings and admonitions that confinement to Children’s Village would result.

(Emphasis provided) (E’s Exh. 69, p. 44, par 61)

Respondent’s argument that “to hold that juveniles could not be held responsible to a court for contempt would strip the family courts and juvenile courts of all power to control delinquent and defiant children” (R’s SC Brief, p. 31) is without merit. There is no evidence that the Tsimhoni children were delinquent or defiant. In fact, at the October 10, 2016, oral arguments to the Commission, Respondent’s counsel denied that the children were refusing the mother’s lawful commands to engage in visitation with their father. (D&R, p. 16, fn. 20; TX of 10/10/16, p. 30) Next, as the Commission pointed out, even if there was evidence that the children were “incorrigible,” Respondent could have filed a juvenile petition under MCL 712A.2(a)(3).¹⁵ (D&R, p.

¹⁵ The Commission also noted that under the Mental Health Code, specifically, MCL 330.2062 (1)-(3), NT would have been deemed incompetent for purposes of imposing legal sanctions for her actions due to her youth and that while LT and RT would have been presumed competent, “Respondent’s professed belief that ten-year old RT was being unduly

16, fn. 20) Finally, the Commission was very clear that not only did Respondent's orders not specify the quality of the visitations, (D&R, p. 17), it is beyond the capacity of a judge to change the hearts of those coming before her simply by issuing orders. (D&R, p. 18)

Respondent's argument that her June 24 decision, even if erroneous, was made in "good faith" and is, therefore, subject only to appellate rather than the Commission's review is unsupported by either the law or the facts. An appellate remedy does not preclude a finding of judicial misconduct. *Matter of Laster*, 404 Mich 449, 461-462 (1979) (D&R, p. 16, fn. 19) The Commission, pursuant to MCR 9.203(B), is specifically authorized to examine judicial decisions incident to a complaint of judicial misconduct and the existence of an appeal does not divest the Commission of jurisdiction over a judicial officer's conduct. As the Michigan Supreme Court stated in *Pellegrino v Ampco Sys Parking*, 486 Mich 330, 352 (2010) (footnote omitted),

...the trial judge's...actions...in denying defendant's peremptory challenge, establish a basis for concluding that this is the unusual case in which retrial court occur before a different judge. Moreover, we believe that these same comments and actions could supply a basis for the Judicial Tenure Commission to investigate whether judicial misconduct has occurred should it choose to do so.

Further, MCR 9.203(B) has two prongs: that the judge acted in "good faith" *and* that the judge exercised "due diligence." Respondent offered no testimony on either point. There is no evidence in the record to support a finding of good faith nor is there any evidence of due diligence. By her own account, Respondent simply grew "frustrated" and then acted on that frustration. (E's Exh. 69, p. 2, p. 51)

The claim that "good faith" should immunize a judge from the consequences of his or her misconduct was specifically addressed in *In re Morrow, supra*, where the Michigan Supreme Court stated:

influenced by thirteen-year old LT...may have sufficed to raise the issue of competency for both children." (D&R, p. 16, fn. 20)

Respondent misapprehends the meaning of “good faith.” Acting in disregard of the law and the established limits of the judicial role to pursue a perceived notion of the higher good...is not “good faith.” *Id.* at 300.

There is overwhelming evidence that on June 24, 2015, Respondent did not act in good faith or with due diligence. It was not good faith or due diligence to find LT in contempt of court for disobeying a court order that did not exist or to subject him to an improper summary contempt hearing. Not only did Respondent exhibit a complete lack of knowledge of the law of contempt, she also failed to take any steps, either prior to incarcerating the children or at any time during the 17 days of their confinement, to conduct any research or consult any authority to ensure that her June 24, 2015, decision was as justified and as well-thought out as she has since claimed. (E’s Exh. 69, p. 2)

It was not good faith for Respondent to repeatedly raise her voice to the children, repeatedly attempt to intimidate them, and repeatedly insult and ridicule them and their mother. It was not good faith for Respondent to repeatedly and intentionally misrepresent to the children the duration of their confinement and the dates their case will be reviewed. (E’s Exh. 152, p. 5, p. 7, p. 9, p. 10, p. 20, p. 22; E’s Exh. 139, at 12:43:03) It was not good faith for Respondent to intentionally misrepresent the living conditions at Children’s Village, including lack of privacy in the most basic and personal needs. (E’s Exh. 152, p. 7, p. 18; E’s Exh. 139, at 12:11:25, at 12:40:09) Respondent admits she had misrepresented the living conditions at Children’s Village to the children but claims that she was merely trying to scare them into choosing their father over jail. (FH TX, p. 339) In essence, Respondent admits to having used the judicial bench to misrepresent and intimidate.

Respondent’s lack of good faith is also evident from her failure to take personal responsibility for her June 24, 2015, conduct. On July 10, 2015, while addressing a courtroom packed with reporters, Respondent insisted that she had done nothing wrong because no one had objected to her June 24 decision and because no one had suggested any alternate placement options for the children. (D&R, p. 13; R’s Exh. 87, p. 5, p. 8; R’s Exh. 88, at 2:14:27, at 2:17:56) She also

claimed that the media had falsely reported that the children were “locked up” (R’s Exh. 87, p. 11; R’s Exh. 88, at 2:21:33) despite the fact that on June 24, 2015, she told the children that they would be locked up in “jail cells.” (E’s Exh. 152, p. 20; E’s Exh, 139, at 12:41:43)

Respondent’s claim that she did not commit misconduct because “if she was wholly without discretion to act, she “would have expected the children’s attorneys, the mother’s attorney, or the children’s Guardian ad Litem to object” (R’s Brief, p. 19-20) ignores the fact that each judge is responsible for his or her own behavior and for the proper conduct and administration of the court over which the judge presides. MCR 9.205(A). (D&R, p. 14) As a judicial officer, Respondent is under a continuous duty to conduct herself in a proper manner and to avoid “all impropriety and appearance of impropriety.” MCJC, Canon 2A Respondent must not only respect and observe the law, her conduct should at all times “promote public confidence in the integrity and impartiality of the judiciary.” MCJC, Canon 2B; MCR 9.205 Respondent failed in these responsibilities. She failed to observe and respect the law; failed to maintain professional competence in it; failed to be patient, dignified, and courteous; and failed to adopt the usual and accepted methods of doing justice. The fact that Respondent was dealing with children who, as the Commission stated, “found themselves in the middle of a protracted legal controversy that was not of their making,” (D&R, p. 17) made her actions from the bench even more unacceptable because,

...it strikes at the heart of the proper role of a judge when dealing with children: to be a safe haven and refuge rather than a bully, a source of guidance rather than just another grown-up barking commands that they cannot understand.

(D&R, p. 18)

B. COUNT II – MISREPRESENTATIONS

The Commission determined that the Examiner did not prove by a preponderance of the evidence that Respondent had made intentional misrepresentations in her answer to the 28-Day Letter, or during her testimony before the Master. The Commission found, however, that one of

Respondent's answers to the 28-Day Letter was misleading enough to justify the imposition of costs under MCR 9.205(B). (D&R, p. 21)

At issue was Respondent's claim that the four to six circular motions she had made at her temple during the June 24, 2015, hearing, while comparing LT to Charles Manson's cult, were not intended to imply that LT was "crazy." (E's Exh. 69, p. 30, par. 32; E's Exh. 152, p. 11; E's Exh. 139, at 12:14:05) In her answer to the Commission's 28-Day Letter, Respondent stated that she believed the gesture referred to therapy that LT was going to receive at Children's Village, specifically the "forward motion of the wheels of therapy." (E's Exh. 69, p. 30, par. 32) At the formal hearing, however, Respondent claimed that she had no memory of having made the gesture and was not aware of having had made it until she saw the video of the June 24, 2015, proceedings. (TX FH, p. 65; TX FH, p. 340-342) Respondent admitted that her answer to the Commission's 28-Day letter was a guess, but justified it by stating that she thought that if she did not provide some explanation for the gesture, she would face another allegation of misconduct. (D&R, p. 20; TX FH, p. 341-342)

As the Commission noted, a false statement requires the speaker's knowledge that the statement is false coupled with an intent to deceive. (D&R, p. 20) The fact that a statement is incorrect or incredible does not, by itself, supply proof that the speaker possessed the intent to deceive by making it. (D&R, p. 20) The Commission did not find that Respondent's gesture was not referring to LT's mental state. The video evidence presented at the formal hearing clearly supports such a finding. Respondent had made the gesture while referring to a cult of mass murders. Within a minute of that gesture, Respondent pointed the fingers of her right hand directly to her temple while telling LT, "[y]ou are so mentally messed up right now." (E's Exh. 139, at 1:39:20) She also told the children that she doubted that they had a high IQ, (E's Exh. 152, p. 6; E's Exh. 139, at 12:09:42) that they were "brainwashed," (E's Exh. 152, p. 21; E's Exh. 139, at 12:42:17; 12:42:23; 12:42:25) and that they were not "normal human beings." (E's Exh. 152, p. 22; E's Exh.

139, at 12:43:05) In her Answer to the Formal Complaint, Respondent also admitted that she considered the children's behavior as "bizarre" (R's Ans. to FC 98, par. 55) and in her testimony before the Master she claimed that she considered the children's lack of willingness to communicate with their father "nonsensical." (R's Ans. to FH, p. 16, par. 52 d) What the Commission stated was that without any proof that Respondent's representation of lack of memory was false, it could not say that her statement that she believed her gesture was intended to simulate the wheels of therapy was a "misrepresentation within the meaning of the law." (D&R, p. 20)

The Commission also found, however, that this lack of memory proved that Respondent's answer was misleading. The Commission determined that if Respondent did not recall the gesture, she could not have known the intent behind it. By providing an explanation for it, which the Commission found self-serving, (D&R, p. 20) Respondent provided an answer that was designed to mislead the Commission into accepting an innocent excuse for what appeared to be an offensive and inappropriate act.

Respondent is incorrect that the terms "misrepresenting" and misleading are indistinguishable. (R's SC Brief, p. 40) While Black's Law Dictionary defines "misrepresentation" as "any manifestation by words or conduct that....amounts to an assertion not in accordance with the facts," it defines "misleading" as "delusive; calculated to lead astray or to lead into error." That these terms may represent different situations in judicial disciplinary proceedings is reflected by the fact that MCR 9.205(B) specifically separates them into two categories, allowing for the imposition of costs, fees, and expenses when,

"...a judge engaged in conduct involving fraud, deceit, or intentional misrepresentations,"

or,

"...if a judge made misleading statements to the commission, the commission's investigators, the master, or the Supreme Court."

(Emphasis provided) MCR 9.205(B)

Contrary to her argument, Respondent is not being penalized for “cooperat[ing] too much.” (R’s SC Brief, p. 37) She is also not being penalized for her attempt to be specific and precise. (R’s SC Brief, p. 37) Rather, Respondent is being held accountable for providing a misleading answer to the Commission’s 28-Day Letter by offering an exculpatory excuse for a gesture she does not recall ever making. The Commission’s conclusion in this regard is well supported by the evidence and should be adopted by the Court.

C. CONCLUSION

The evidence in this matter overwhelmingly supports the Master’s and the Commission’s finding that Respondent engaged in improper and unethical conduct during the June 24, 2015, contempt hearing she held against LT, RT, and NT. The evidence also proved that Respondent made an intentionally misleading statement in her Answer to the Commission’s 28-day letter.

On June 24, 2015, Respondent lost her objectivity and lost her temper. She held an illegal contempt hearing as to LT and improper hearings as to all three children. Respondent berated the children in open court, insulted their mother, and lied to them from the bench. Respondent intimidated the children and threatened to send them to “jail” for years. Very telling of Respondent’s continued refusal to recognize and appreciate the wrongfulness of her June 24, 2015 conduct are her statements at the July 10, 2015, hearing when she refused to take any responsibility for her actions. Likewise, Respondent’s statement at the formal hearing that the only two things she regrets is using the Manson reference and letting RT and NT know that their older brother was already sentenced to “jail” demonstrates Respondent’s refusal to recognize her misconduct.

The Commission’s findings of fact are based on a thorough review and understanding of the evidence produced during the formal hearing. The Commission’s conclusions of law are well founded upon the evidence and the law. This Court is urged to adopt the Commission’s decision and recommendation.

DISCIPLINARY ANALYSIS

A. Criteria for assessing an appropriate sanction

The purpose of judicial discipline is not to punish, but to maintain the integrity of the judicial process and to protect the citizenry from corruption and abuse. *In re Seitz*, 441 Mich 590, 624 (1993). In assessing the appropriate sanction, the primary charge “is to fashion a penalty that maintains the honor and integrity of the judiciary, deters similar conduct, and furthers the administration of justice.” *In re Hocking*, 451 Mich 1, 24 (1996) Since punishment is not a purpose of judicial discipline, there is “not much room for mitigation.” *Seitz*, at 624-625

B. The Brown Factors

The Michigan Supreme Court set forth the criteria for assessing proposed sanctions in *In re Brown*, 461 Mich 1291, 1292-1293, 625 NW2d 744 (1999).

(1) Misconduct that is part of a pattern or practice is more serious than isolated instances of misconduct.

Respondent’s misconduct occurred in one case and was appropriately considered by the Commission as an isolated instance. (D&R, p. 21) The Commission was justifiably concerned, however, that Respondent’s failure to recognize that her acts far exceeded the bounds of proper judicial conduct suggests that it is a pattern that may repeat itself in the future. (D&R, p. 21) The Commission’s concern is based on the numerous breaches of the Canons and appropriate judicial conduct that Respondent committed in two separate contempt hearings. From the very beginning of the first contempt hearing, Respondent repeatedly failed to act in a patient, dignified, and judicial manner. Respondent raised her voice and laughed at the children as they cowered before her. She also made repeated disparaging comments to the children about themselves and about their mother and repeatedly lied to them from the bench. Even after she confined the children to Children’s Village, without any contact with their parents or each other, Respondent continued her misconduct

by failing to take any remedial action to ensure that her decision and the procedure she employed to deprive the children of their freedom was in compliance with the law.

Respondent continued this pattern of misconduct by providing a misleading answer to the Commission's 28-Day Letter. At the July 10, 2015, hearing Respondent also failed to take any responsibility for her actions and blamed everyone else, including the media, for her June 24, 2015, conduct. This factor weighs heavily in favor of the imposition of a serious sanction.

(2) Misconduct on the bench is usually more serious than the same misconduct off the bench.

Respondent's misconduct was clearly committed on the bench. It was from the bench that Respondent bullied a nine-, a ten-, and a thirteen-year-old and conducted illegal and improper contempt hearings to deprive them of their freedom. It was also from the bench that Respondent insulted the children's intelligence, compared LT to a cult of mass murderers, and insulted their mother. As the Michigan Supreme Court stated, a judge's conduct must not undermine the public's faith that judges are as subject to the law as those who appear before them. *In re Noecker*, 472 Mich 1, 13 (2005). Respondent's conduct clearly did not instill such belief in those who became aware of her actions through the extensive national media coverage of this matter. This breach of the MCJC mandates a serious sanction of Respondent for her actions.

(3) Misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of impropriety.

Respondent's misconduct was clearly prejudicial to the actual administration of justice (D&R, p. 22) as was her misleading statement to the Commission's 28-Day Letter. The public expects and is entitled to be treated with courtesy and respect by members of the judiciary. (D&R, p. 22)

The Commission's finding that Respondent engaged in "affirmative actions of abusive conduct on the bench" (D&R, p. 22) is supported by overwhelming evidence. Without regard to the responsibility to apply the "awesome" power of contempt judiciously and "only when contempt is

clearly and unequivocally shown,” *People v Matish*, 384 Mich 586, 572 (1971) Respondent threatened, ridiculed, and insulted the children and deprived them of their freedom. She also deprived them of the opportunity to exonerate themselves by placing the “keys to the jailhouse door” in their father’s hands, being well aware that their father was unavailable. *In re White*, 327 Mich 316, 317 (1950) As the Commission stated, these actions “inhibit the openness and candor from litigants and attorneys that our system of justice needs to function properly.” (D&R, p. 22) This factor weighs heavily in favor of the imposition of a serious sanction.

(4) Misconduct that does not implicate the actual administration of justice or its appearance of impropriety is less serious than misconduct that does.

The Commission properly found that Respondent’s conduct affected the actual administration of justice. (D&R, p. 22) The nature of Respondent’s misconduct reflects a lack of respect for justice and the courts and goes to the very heart of the proper administration of justice.

(5) Misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated.

As the Commission properly observed, Respondent’s actions appear to have been contemplated for nearly a year and she had the chance to reflect upon her actions during the course of a hearing that lasted nearly an hour. (D&R, p. 22) After failing to force three young children to love and not fear their father, on June 24, 2015, Respondent lost all objectivity, disregarded the law, and incarcerated them. During the two separate hearings, Respondent repeatedly raised her voice, insulted, laughed at, and ridiculed the children and compared one of them to Charles Manson’s cult. She also demeaned their mother and barred her from having any contact with the children during their confinement.

Although Respondent’s conduct appears to have been an isolated instance of a judge losing her temper rather than a case of a chronically abusive judge, (D&R, p. 23) the fact that it continued after June 24, when she failed to ensure that her decision and the procedure she had used was in compliance with the law, suggests that Respondent may have no real insight into the nature of her

misconduct. (D&R, p. 23) During the formal hearing and again during counsel's oral argument before the Commission, Respondent did not express any second thoughts about the wisdom or propriety of her actions. (D&R, p. 22) Respondent has consistently refused to take any responsibility for her actions, placing the blame on the parties, the attorneys, and the media. This factor weighs heavily in favor of the imposition of a serious sanction.

(6) Misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery.

Although Respondent's actions did not undermine the ability of the justice system to discover the truth of what occurred in a legal controversy, they clearly prevented a just resolution of the case. Just results cannot occur when Respondent, in a fit of anger, abuses her discretion and her contempt power to remove three minor children from their home and to incarcerate them without any contact with their parents or each other. Just result also cannot occur when Respondent fails to take any remedial action until the case becomes the subject of international media coverage and international outrage. Furthermore, by failing to respond to the children's allegations of violence exhibited by their father, or permitting them freely to articulate their reasons for their behavior on the record the first time they appeared in court before her, Respondent's misuse of her contempt power prevented her from taking the children's perspective into account. (D&R, p. 23) Whether or not these allegations were factually correct, Respondent's failure to give them the chance to convey information to the Court impeded the Court's ability to determine the best interests of the children before it and the best course of action to help resolve a difficult case. (D&R, p. 23) This factor weighs heavily in favor of the imposition of a serious sanction.

- (7) Misconduct that involves the unequal application of justice on the basis of such considerations as race, color ethnic background, gender, or religion are more serious than breaches of justice that do not disparage the integrity of the system on the basis of class of citizenship.***

While there is no evidence that Respondent's conduct was based on any consideration of a class of citizenship, she did target children. (D&R, p. 23).

The totality of the Brown factors weighs in favor of the Commission's recommendation of a public censure, a 30-day suspension without pay.

C. Other Considerations

The Commission has also considered other factors in past cases as suggested by the American Judicature Society.¹⁶

- (1) The Judge's conduct in response to the Commission's inquiry and disciplinary proceedings. Specifically, whether the judge showed remorse and made an effort to change his or her conduct and whether the judge was candid and cooperated with the Commission.**

Respondent continues to insist that by incarcerating the three children she did nothing wrong. Respondent explains her improper behavior by providing a misleading answer to the Commission as well as the Master. Clearly, Respondent had demonstrated that she has absolutely no respect for her judicial position or appreciation for the serious nature of the charges against her or the overwhelming evidence in support of those charges. This factor weighs heavily in favor of the imposition of the most extreme sanction.

- (2) The effect the misconduct had upon the integrity of and respect for the judiciary.**

Respondent's misconduct has been the subject of extensive media coverage, which casts not only Respondent but also the judiciary as a whole in a negative light. Contrary to Respondent's claim, evidence of the media coverage of this matter has been admitted into evidence. The presence of the media was obvious in the video of the July 10, 2015, hearing, (R's Exh. 88) At the same

¹⁶ "How Judicial Conduct Commissions Work," American Judicature Society, 1999, pp. 15-16.

hearing, Respondent herself made a reference to the “national attention” that the case had “garnered” when she blamed a “local media outlet” for breaking the story. (R’s Exh. 87, p. 5; R’s Exh. 88, at 12:14:12)

The fact that Respondent has the respect of the attorneys who practice before her is irrelevant as the judicial system is for the benefit of litigants and the public rather than the judiciary.¹⁷ (MCJC, Canon 1) As the Commission stated, a lack of proper judicial temperament, or indication of favoritism emanating from the bench, erodes public confidence in our system of justice and calls into question the impartiality of our courts. (D&R, p. 22)

(3) Years of judicial experience.

Respondent has been a judge on the bench of the 6th Circuit Court for eight years. There is no mitigation because of inexperience. To the contrary, Respondent’s length of service only exacerbates the wrongfulness of her behavior.

D. Proportionality

The Michigan Supreme Court requires that the Commission’s sanction recommendation be “reasonably proportionate” to the conduct and “reasonably equivalent” to previous cases. As the Court stated in *In re Ferrara*, 458 Mich 350 (1998);

Our primary concern in determining the appropriate sanction is to restore and maintain the dignity and impartiality of the judiciary and to protect the public.

In *In re James*, 492 Mich 553 (2012), Justice Stephen J. Markman emphasized that our judicial system “is only as good as its constituent judges.” In support of that principle, Justice Markman relied on *In re Probert*, 411 Mich 210 (1981) where the Supreme Court declared that:

[W]hen one commits judicial misconduct he not only marks himself as a potential subject of judicial discipline, he denigrates an

¹⁷ Respondent’s inclusion of various letters, including the letters of support she had received during the pendency of this matter and the favorable news articles written about her (Appendix Nos. 30 and 31) with her “Corrected Petition to Reject or Modify, In Part, the Recommendations of the Judicial Tenure Commission” is improper as these documents were never admitted as evidence at the formal hearing or before the Commission.

institution. Accordingly, a decision on judicial discipline must also be responsive to a significant institutional consideration, “the preservation of the integrity of the judicial system.” Institutional integrity, after all, is at the core of institutional effectiveness.

Id. at 231

In the present case, Respondent’s improper, unethical, and illegal conduct is inexcusable. Not only did she engage in inappropriate conduct by failing to act in a patient, dignified, and judicious manner, Respondent also abused the contempt power of her court. As the Michigan Supreme Court stated in *People v Matish, supra*, the contempt power is awesome, and must be used with the utmost restraint. See also *In re Hague*, 412 Mich 532 (1982).

In *In re Post*, 493 Mich 974 (2013), which the Commission found of particular guidance, respondent held an attorney in contempt of court and sentenced him to a weekend in jail for asserting his client’s 5th Amendment privilege against self-incrimination. Despite the fact that respondent’s contempt ruling in *In re Post, supra*, was reversed and the attorney was released after serving only a few hours, the Commission felt that this abuse of the court’s contempt power together with the demeaning treatment of the attorney during the proceedings was serious enough to warrant a 30-day suspension without pay. The Court adopted that recommendation.

The Commission was clear that Respondent’s conduct in the present case was worse than that in *In re Post, supra*. (D&R, p. 25) The Commission noted that the legal harm and Respondent’s insulting and demeaning language and subsequent finding of contempt was not only abusive, it was directed at children. (D&R, p. 25) The Commission recognized, however, that Respondent had an exemplary judicial record and recommended that Respondent’s sanction be limited to a public censure with a 30-day suspension without pay.

E. Costs

MCR 9.205 provides in part:

In addition to any other sanction imposed, a judge may be ordered to pay the costs, fees and expenses incurred by the commission in prosecuting the complaint only if the judge engaged in conduct involving fraud, deceit, or intentional misrepresentation, or if the judge made misleading statements to the commission, the commission's investigators, the master, or the Supreme Court.

The evidence overwhelmingly supports that Respondent engaged in numerous instances of misconduct and violations of law. Respondent also made a misleading statement to the Commission during the investigation of this matter. As recommended by the Commission, Respondent should be ordered to pay the costs incurred by Commission in the amount of \$12,553.75.

RECOMMENDATION

Respondent's misconduct is deliberate. There is overwhelming evidence to support a finding of misconduct with reference to the allegations in each of the counts in FC 98. Respondent, in various manners of misconduct, is responsible for:

1. Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30, and MCR 9.205.
2. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30, and MCR 9.205.
3. Failure to establish, maintain, enforce, and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary Canon 1 of the Code of Judicial Conduct.
4. Irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of Canon 2 of the Code of Judicial Conduct.
5. Conduct involving impropriety and the appearance of impropriety, in violation of Canon 2A of the Code of Judicial Conduct.
6. Failure to respect and observe the law and to conduct herself at all times in a manner which would promote the public's confidence in the integrity and impartiality of the judiciary, contrary to Canon 2B of the Code of Judicial Conduct.
7. Failure to be faithful to the law and maintain professional competence in it, contrary to Canon 3A(1) of the Code of Judicial Conduct.

8. Failure to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, contrary to Canon 3A(3) of the Code of Judicial Conduct.
9. Failure to adopt the usual and accepted methods of justice; failure to avoid the imposition of humiliating acts of discipline, not authorized by law, and failure to endeavor to conform to a reasonable standard of punishment, contrary to Canon 3A(9) of the Code of Judicial Conduct.
10. Conduct exposing the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104 (2).
11. Conduct contrary to justice, in violation of MCR 9.104 (3).
12. Conduct that violates the rules or standards of professional conduct, in violation of MCR 9.104 (4).
13. Lack of personal responsibility for her own behavior, and for the proper conduct and administration of her courtroom, contrary to MCR 9.205.
14. Failure to exhibit due diligence to ensure that her rulings on contempt conformed to the controlling law, MCR 3.606 and MCL 600.1701 *et seq.*

RELIEF REQUESTED

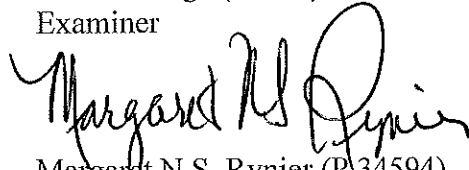
The Court should publicly censure Respondent, suspend Respondent from the office of Judge of the 6th Circuit Court for a period of 30 days without pay, and order Respondent to pay costs in the amount of \$12,553.73.

Respectfully submitted,



Glenn J. Page (31703)

Examiner



Margaret N.S. Rynier (P34594)

Associate Examiner

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